

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

SEA STAR LINE, LLC,	:	
	:	
Plaintiff/	:	
Counterclaim Defendant,	:	
	:	
v.	:	Civ. No. 05-245-JJF-LPS
	:	
EMERALD EQUIPMENT LEASING, INC.,	:	
	:	
Defendant/	:	
Counterclaim Plaintiff.	:	

**EMERALD EQUIPMENT LEASING INC.'S
RESPONSE TO SEA STAR LINE, LLC'S
MOTION TO COMPEL RETURN OF PRIVILEGED
DOCUMENTS AND REMOVAL FROM COURT RECORD**

Emerald Equipment Leasing, Inc. ("EEL") files this response to the Sea Star Line, LLC' ("SSL") Motion to Compel Return of Privileged Documents and Removal from Court Record, and in support thereof, states as follows:

RESPONSE

EEL has had an opportunity to review SSL's Motion to Compel Return of Privileged Documents and Removal from Court Record (the "SSL Misfiling Motion"). The relief sought by SSL in the SSL Misfiling Motion pertains to several e-mails (the "Emails") which SSL asserts was inadvertently attached to Exhibit B to the SSL Response to Emerald's Submission Regarding Baxter Health Care, Inc. (the "SSL Baxter Response") (Dkt. No. 149). The "inadvertent" release of what SSL contends is privileged attorney-client and/or attorney work product e-mails in this case, was not made in the course of discovery, but rather was part of a public filing with the Court. Nonetheless, in light of the circumstances presented, EEL does not oppose certain limited aspects of the relief sought by SSL.

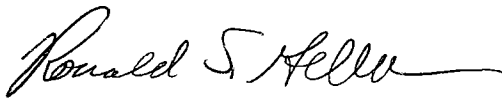
EEL does not oppose SSL's request that EEL return the Emails, and agrees to destroy all hard copies thereof as well as any electronic copies that it can reasonably recover and destroy. However, in the SSL Misfiling Motion, SSL seeks relief far beyond return of the materials. Specifically SSL "requests an Order be entered compelling EEL to return the e-mails, to destroy all hard and electronic copies preventing the substance of the e-mails from being disclosed to EEL or anyone else, prohibiting EEL from using any information in the e-mails in this litigation, removing the e-mails from the docket, and authorizing the filing of the correct Exhibit B." (See page 6 of the SSL Misfiling Motion.). Some of this requested relief is either overbroad and/or inapplicable. The SSL Baxter Response, as all pleadings in this case, was forwarded to EEL upon its receipt. The relief sought by SSL preventing the substance of the Emails from being disclosed to EEL cannot realistically happen. Further, certain information contained in the Emails has been obtained from other sources and is available for use in this litigation. It was SSL's negligence which created this situation. They should not now be permitted to use their mistake to prejudice EEL. In any event, EEL agrees that it will not use the actual Emails in this litigation and will destroy all hard copies and electronic copies of the Emails to which it can reasonably recover and destroy. Further, EEL agrees not to circulate the Emails to any other party. Finally, EEL does not oppose the relief sought by SSL seeking an Order directing that the Emails be removed from the docket and authorizing the filing of the correct Exhibit B. That should suffice under the circumstances presented.

Within the parameters set forth above, EEL does not oppose the entry of an appropriate order.

Date: December 28, 2007

Respectfully submitted,

ECKERT SEAMANS CHERIN
& MELLOTT, LLC

By: 

Ronald S. Gellert, Esquire (No. 4259)
300 Delaware Avenue, Suite 1210
Wilmington, De 19801
Phone: 302-425-0430
Fax: 302-425-0432

and

Gary M. Schildhorn, Esquire
Alan I. Moldoff, Esquire
Eckert Seamans Cherin & Mellott, LLC
Two Liberty Place
50 South 16th Street, 222nd Floor
Philadelphia, PA 19102
Phone: 215-851-8400
Fax: 215-851-8383

Attorneys for Defendant
Emerald Equipment Leasing, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on December 28, 2007, a true and correct copy of the foregoing Emerald Equipment Leasing Inc.'s Response to Sea Star Line, LLC's Motion to Compel Return of Privileged Documents and Removal from Court Record, was served via United States, first class, postage prepaid mail upon the following:

Timothy J. Armstrong, Esq.
Armstrong & Mejer, P.A.
Suite 1111 Douglas Centre
2600 Douglas Road
Miami, FL 33134

Kathleen M. Miller, Esq.
Smith Katzenstein & Furlow LLP
800 Delaware Ave., 7th Floor
P.O. Box 410
Wilmington, DE 19801

ECKERT SEAMANS CHERIN &
MELLOTT, LLC



Ronald S. Gellert, Esquire
300 Delaware Avenue, Suite 1210
Wilmington, DE 19801
302-425-0430

and

Alan I. Moldoff, Esquire
ECKERT SEAMANS CHERIN &
MELLOTT, LLC
Two Liberty Place
50 South 16th Street, 22nd Floor
Philadelphia, PA 19102
(215) 851-8400

Attorney for Defendant
Emerald Equipment Leasing, Inc.